

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BAYER CROPSCIENCE LP and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

TEDDY WILLIS,

Defendant.

Case No. 5:21-cv-00070-H

**PLAINTIFFS' UNOPPOSED MOTION TO MODIFY THE
SCHEDULING ORDER AND FOR A CONTINUANCE**

Plaintiffs Bayer CropScience LP and Monsanto Technology LLC (“Plaintiffs”) move the Court to modify the Scheduling Order (ECF No. 22), including a continuance of the trial date, as set forth in the below table. Defendant Teddy Willis consents to, and therefore does not oppose, this motion.

Plaintiffs request an extension of the schedule for a number of reasons, including, but not limited to, delays caused by the COVID-19 pandemic and the omicron variant. The parties are currently scheduling depositions that are expected to begin in late February. After early settlement discussions among the parties last fall, depositions had been scheduled to take place in person starting in December, but were postponed because of the pandemic and increasing omicron numbers, and counsel’s father passing away. Counsel also tested positive for COVID-19, making scheduling more difficult. While the deposition of Defendant was then scheduled for February 24, 2022, it again had to be postponed because a family member of Defendant required hospitalization after testing positive for COVID-19. As recent spikes in the coronavirus have been waning, Plaintiffs are hopeful that the depositions will proceed in the near future. Right now, the parties intend for the deposition of Defendant to take place next week. In addition, this case is reliant on

laboratory testing of cotton seed genetics and DNA. *See, e.g.*, Dkt. 1-1 at Claim 2 (reciting “an insert DNA encoding Cry2Ab and DNA have nucleotide sequences of SEQ ID NO:14”). Because of laboratory backlogs caused by capacity issues and staffing shortages, Plaintiffs have not yet received the required laboratory results, and thus additional time is required for discovery and the expert report deadlines.

Plaintiffs note that the current schedule has a trial date set (admittedly at the parties’ suggestion) approximately one year from the entry of the original Scheduling Order and less than 17 months from the filing of the complaint. The median time to trial in this District, however, is over 33 months.¹ The extremely aggressive schedule in this patent case has shown to be unworkable under the present circumstances. Accordingly, Plaintiffs submit that there is good cause to modify the Scheduling Order, and further, that exceptional circumstances exist for continuing the trial date.

Plaintiffs, therefore, respectfully move the Court to modify the Scheduling Order and extend the deadlines as set forth in the below table. The proposed schedule maintains readiness for trial within two years of filing the complaint, which is considerably faster than the typical time frame for patent cases in this District.

Deadline²	Current Date	Proposed Date
Motion to Compel Discovery or for a Protective Order (¶ 15)	Later of March 25, 2022 or 15 days after the discovery response at issue was served or due to be served	Later of August 22, 2022 or 15 days after the discovery response at issue was served or due to be served

¹ Docket Navigator (www.docketnavigator.com) reports the following statistics for time to jury trial in patent cases in this District – median: 2 years 9.7 months; average: 2 years 9.2 months; first quartile: 2 years 1.1 months; and third quartile: 3 years 6.2 months.

² All Paragraph (¶) citations within the table are to the Scheduling Order (ECF No. 22).

Deadline²	Current Date	Proposed Date
Designation of Expert Witnesses on Non-Construction Issues (¶ 14(a))	March 28, 2022	July 25, 2022
Deadline for Final Infringement and Invalidity Contentions (¶ 13)	April 8, 2022	August 16, 2022
Responsive Designation of Experts (¶ 14(b))	April 25, 2022	September 2, 2022
Rebuttal Expert Disclosures (¶ 14(c))	May 25, 2022 ³	October 3, 2022
Completion of Discovery (¶ 15)	May 9, 2022	October 11, 2022
Other motions that are related to discovery but do not seek to compel or avoid as-yet uncompleted depositions, service of discovery responses, or production of documents or electronically stored information (ESI) (¶ 15)	May 12, 2022	October 14, 2022
Expert Objections (¶ 14(d))	May 9, 2022	October 31, 2022
Dispositive Motions (¶ 16)	May 9, 2022	October 31, 2022
Mediation (¶ 19)	June 8, 2022	November 29, 2022
Pretrial Disclosures and Objections (¶ 17)	July 18, 2022	January 9, 2023
Pretrial Materials (¶ 18)	July 18, 2022	January 9, 2023
Objections to Pretrial Disclosures (¶ 17)	July 25, 2022	January 16, 2023
Trial Briefs and Motions in Limine (¶ 18(d), (e))	July 25, 2022	January 23, 2023
Responses to Trial Briefs and Motions in Limine (¶ 18(d), (e))	August 1, 2022	January 30, 2023
Pretrial Conference (¶ 20)	To be set if necessary.	To be set if necessary.
Trial Date (¶ 1)	August 8, 2022	February 6, 2023

³ The Scheduling Order states rebuttal expert disclosures shall be made within 30 days of the disclosure made by the other party. ECF No. 22 ¶ 14(c).

For these reasons, Plaintiffs respectfully request this Court modify the Scheduling Order and extend the deadlines as set forth in the above table.

Dated: February 25, 2022

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Plaintiffs conferred with counsel for Defendant, Zach Oubre, who advised that his client, Teddy Willis, consents to the present motion and relief sought herein.

By: s/ Nicole L. Williams


CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record are being served with this document on this 25th day of February 2022 via the Court's CM/ECF system.

By: s/ Nicole L. Williams

APPROVAL AND CONSENT OF MOVING PARTY

Pursuant to Local Civil Rule 4.1, I, Scott Baucum, am the authorized agent of Plaintiffs Bayer CropScience LP and Monstanto Technology LLC, and on behalf of Plaintiffs Bayer CropScience LP and Monstanto Technology LLC, approve and consent to the relief sought in the foregoing motion.

By 
Scott Baucum,
Vice President, U.S. Special Compliance & Asset Protection

*Authorized Representative of Plaintiffs
Bayer CropScience LP and Monsanto
Technology LLC*